

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABOBAKKR DIRAR and MOHAMED
ELAMIN,

Plaintiffs,

v.

ALASKA AIRLINES, INC.,

Defendant.

Case No. C22-1076-RSM

ORDER DENYING MOTIONS FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Defendant Alaska Airlines Inc. (“Alaska”)’s Motion for Summary Judgment. Dkt. #41. Plaintiffs Abobakkr Dirar and Mohamed Elamin oppose Alaska’s Motion in its entirety and filed their own Motion for Summary Judgment. Dkt. #46. Having reviewed Defendant’s Motion, Plaintiffs’ Opposition and Motion, and all documents submitted in support thereof, the Court DENIES Defendant’s Motion for Summary Judgment, and DENIES Plaintiffs’ Motion for Summary Judgment.

II. BACKGROUND

Plaintiffs claim that Alaska discriminated against them on the basis of their race, national origin and/or ethnicity under 42 U.S.C. § 1981 and Washington State Law Against Discrimination (RCW 49.60.030) by wrongfully removing them from an airline flight. Abobakkr Dirar and Mohamed Elamin are friends and colleagues who are both male, Black, Muslim,

1 bearded, Sudan-born citizens of the United States who predominantly speak Arabic and some
2 English with a pronounced Arabic accent. Dkt. #1. On February 17, 2020, Plaintiffs were seated
3 in the first-class section of Alaska Airlines Flight 304, stationed at the C-Concourse gate of
4 Seattle-Tacoma International Airport, awaiting departure for a business trip to San Francisco. *Id.*
5 Captain Phillip Reda was the pilot in command. Dkt. #4 at 5.

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7 Mr. Dirar and Mr. Elamin are business partners in the medical transport business, which
8 specializes in transporting people to doctor's appointments, kidney dialyses appointments, and
9 the like. Dkt. #46-12, at 10. They were on their way to San Francisco to purchase two vehicles
10 for their business, which they intended to drive back to Washington State the next day. *Id.*
11 Plaintiff Dirar was seated in business class seat 2C and Plaintiff Elamin was seated across the
12 aisle in seat 2F. Dkt. #41, Figure 2. Next to Mr. Dirar, a white, middle-aged passenger,
13 Christopher Chapeta, was seated with his laptop in his lap. Dkt. #46-13, at 35.

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15 While waiting for takeoff, Mr. Dirar was texting with a Sudanese friend and fellow
16 Washington State resident named Mutasim Mukhtar. Dkt. #46-12, at 35. Passenger Chapeta
17 observed this and informed a flight attendant that he wished to disembark the plane to speak with
18 Captain Reda. Dkt. #46-15 at 36. While waiting for the flight to take off, Mr. Elamin asked a
19 female flight attendant if he could use the restroom, and she said, "Yes. Go ahead." Dkt. #46-13
20 at 33.

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22 The precise details of what Passenger Chapeta shared with Captain Reda, and the factors
23 that contributed to Captain Reda's ultimate decision to deplane the Plaintiffs remain in dispute.
24 Captain Reda will testify that Passenger Chapeta told him that he had a background in security
25 and had seen "the word 'mutasim,' some Arabic symbols, 'captain,' some emojis of middle
26 fingers, and airplanes flying into buildings" on the cell phone of the passenger seated next to him.
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1 Dkt. #46-6, ¶1. No Alaska employee confirmed Passenger Chapeta's security credentials. Dkt.
2 #46-11, at 44. Passenger Chapeta then showed Captain Reda a recreation of what he had
3 observed, typing out emojis on his own phone. Dkt. #41, Figure 1. Passenger Chapeta also
4 reported that Mr. Dirar and Mr. Elamin were glancing at each other, across the aisle. Dkt. #46-1
5 at 46 and Dkt. #46-11 at 50. Neither Passenger Chapeta nor Captain Reda were familiar with the
6 Arabic language. Dkt. #46-15 at 26. Captain Reda will testify he googled "mutasim" which came
7 up with multiple meanings including a person's name, or "blessing;" he then googled "mutasim
8 + terrorist" collectively and found an Islamic Free Syrian Army faction. Dkt. #46-15 at 62.

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10 The captain then requested the presence of an Alaska supervisor, Veronica Matejski. Dkt.
11 #46-14, at 42. Passenger Chapeta repeated what he had told Captain Reda to Supervisor Matejski
12 and shared that he believed the texts were being exchanged with a man on the other side of the
13 aisle. *Id.* at 43. Captain Reda decided to deplane Mr. Dirar and Mr. Elamin to better understand
14 the texts, while Supervisor Matejski called Alaska Guest Services Manager Jason Aspelund, who
15 in turn contacted Alaska Manager Nooredine Elkihal, who speaks Arabic. Dkt. #41.

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17 Managers Elkihal and Matejski escorted Mr. Dirar and Mr. Elamin to the C-17 service
18 center, outside the gate but in the corner of the concourse, where two police officers and the
19 captain were waiting. Dkt. #46-12, at 58. Manager Elkihal asked the Plaintiffs if he could ask
20 them a few questions about what was observed on their phones, and Mr. Dirar provided Manager
21 Elkihal his phone to review the messages. Dkt. #46-8, ¶3. After reviewing the messages, Manager
22 Elkihal told Captain Reda that the texts were Mr. Dirar joking with a friend, and that the emojis
23 were in response to a question about pictures. *Id.*, ¶4. The captain insisted on seeing the emojis
24 himself, however Mr. Dirar will testify he deleted the emojis he had previously showed Manager
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1 Elkihal because he was scared. Dkt. #46-12, at 77. Captain Reda was told that the text messages
2 were altered. Dkt #41-5 at 81.

3 Captain Reda will testify he felt there were multiple red flags pointing to a possible
4 security threat, namely that the text included “911,” “Mutasim,” and “Captain;” that Mr. Dirar
5 deleted some of the text messages; and that Mr. Elamin used the lavatory “quickly.” Dkt. #46-8,
6 ¶6. Captain Reda determined that both men would not fly on Flight 304. Dkt. #46-15, at 131. He
7 then directed that the airplane be unloaded and that a security sweep be conducted. *Id.*, at 138.
8 He added servicing the lavatory to the list of items to resecure the aircraft in case something had
9 been flushed down the toilet or planted under the sink. *Id.*

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11 The Port of Seattle Police Report states that when the first police officer arrived, an
12 Alaska Manager told him that the incident was, “a misunderstanding between passengers,” that
13 “everything was fine,” that “there was no threat of any kind,” and that “police were no longer
14 needed.” Dkt. #46-10, at 2. Another Alaska gate agent approached the officer and told him that
15 Alaska was going to have the passengers deplane and be re-screened. *Id.* Then the first Alaska
16 Manager told the officer Alaska was, “deplaning the passengers to show them that Alaska
17 Airlines was concerned about their security and took the incident seriously.” *Id.*

18
19 Alaska had all passengers deplane and go through another round of screening by TSA,
20 re-secured the luggage on board the aircraft, requested a K-9 unit search the plane, and emptied
21 the first-class aircraft lavatory as a pre-caution. Dkt. #46-13 at 31. All ticketed Flight 304
22 passengers, except for the Plaintiff passengers, were permitted to re-board the aircraft after TSA
23 re-screening, and the flight ultimately departed for San Francisco. Dkt. #46-2 at 1. Meanwhile,
24 Mr. Dirar and Mr. Elamin spoke with Port of Seattle Police, TSA, and FBI Officials. Dkt. #46-
25 12 at 59.

After an unknown period of time, the officers cleared the men to fly. *See generally* Dkt. #46-10. Mr. Elkihal told the men they would be rebooked but that Captain Reda had suggested they travel on separate flights. Dkt. #46-8, ¶6. Mr. Dirar departed for San Francisco on Alaska Airlines Flight 1754 at 5:25 12 p.m., while Mr. Elamin departed on Alaska Airlines Flight 1752 at 4:45 p.m. Dkt. #41-3 at 13.

On August 2, 2022, Mr. Dirar and Mr. Elamin filed this lawsuit. Dkt. #1. Alaska now seeks summary judgment on Plaintiffs’ claims under 49 U.S.C. § 44902(b) on the basis that an air carrier may refuse transport to passengers whose presence on the airplane might be inimical to safety. Dkt. #41. The Plaintiffs seek summary judgment on the basis that Alaska cannot show a legitimate, non-discriminatory reason for its treatment of the Plaintiffs, and even if it could, Plaintiffs have established pretext. Dkt. #46 at 34.

III. DISCUSSION

A. Legal Standard for Summary Judgment

Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are those which might affect the outcome of the suit under governing law. *Id.* at 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

On a motion for summary judgment, the court views the evidence and draws inferences in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*

1 *Dep't of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). However, the nonmoving party must make
2 a “sufficient showing on an essential element of her case with respect to which she has the burden
3 of proof” to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

4 **B. Discriminatory Removal of Airline Passengers under 42 U.S.C. § 1981(a)**

5 Mr. Dirar and Mr. Elamin claim that their removal from Flight 304 constitutes
6 discrimination under 42 U.S.C. § 1981(a). Section 1981 provides, in relevant part: “All persons
7 within the jurisdiction of the United States shall have the same right in every State and Territory
8 to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit
9 of all laws and proceedings for the security of persons and property as is enjoyed by white
10 citizens....”*Id.* A claim under Section 1981 requires a plaintiff to show intentional discrimination
11 on account of race. *Evans v. McKay*, 869 F.2d 1341, 1344 (9th Cir. 1989) (citing *Gen. Bldg.*
12 *Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 376 (1982)).

13 To establish a prima facie case under Section 1981, a plaintiff must prove: “(1) that they
14 are members of a racial minority; (2) that the defendants had an intent to discriminate on the
15 basis of race; and (3) that the discrimination concerned one or more activities enumerated in the
16 statute.” *Modoc v. W. Coast Vinyl, Inc.*, No. 10-cv-05007-RJB, 2011 WL 1363785, at *7 (W.D.
17 Wash. Apr. 11, 2011). There is no dispute that Plaintiff passengers, two Black, Sudanese, and
18 Middle Eastern men who predominantly speak Arabic, meet the first element. Parties likewise
19 do not dispute the third element, since Plaintiffs claim discrimination in their right to contract
20 with Alaska Airlines through purchase of their airline tickets. The Court's focus on this summary
21 judgment motion is therefore the second element: whether Alaska intended to discriminate
22 against Mr. Dirar and Mr. Elamin on the basis of race, ethnicity, or national origin.
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1 To prove intentional discrimination under Section 1981, a plaintiff must prove racial
2 animus either through direct evidence, such as derogatory or offensive comments, or through
3 circumstantial evidence. *Lindsey v. SLT Los Angeles, LLC*, 447 F.3d 1138, 1152 (9th Cir. 2006).
4 Plaintiffs offer no direct evidence of discrimination by Captain Reda, or any other member of the
5 Alaska flight crew, and instead point to circumstantial evidence to create an inference of
6 discrimination against the Plaintiffs. *See generally* Dkt. #46. Circumstantial evidence for
7 individual claims of discrimination is evaluated under the *McDonnell Douglas* framework. *White*
8 *v. Cal.*, 754 Fed. Appx. 575, 576 (9th Cir. 2019). Under this burden-shifting framework, a
9 plaintiff must first establish a *prima facie* case proving (1) he is a member of a protected class;
10 (2) he attempted to contract for certain services; (3) he was denied the right to contract for those
11 services; and (4) such services remained available to similarly situated individuals who were not
12 members of plaintiff's protected class. *Lindsey*, 447 F.3d at 1144–45 (9th Cir. 2006). If a plaintiff
13 establishes a *prima facie* case, then the burden shifts to the defendant to demonstrate a legitimate,
14 non-discriminatory reason for the adverse action. Upon doing so, the burden shifts back to
15 plaintiff to prove, with “specific and substantial” evidence, that the reason was merely pretext
16 for intentional discrimination. *Id.*, at 1152.

20 **1. Plaintiffs’ *prima facie* case**

21 The parties do not dispute that Plaintiffs satisfy the first three elements. On the fourth
22 element, Plaintiffs contend that the “similarly-situated” standard is not an appropriate
23 requirement for a *prima facie* case under the circumstances present here. Dkt. #46 at 27. Plaintiffs
24 urge this Court to follow Sixth Circuit precedent and convert this fourth element to the standard
25 of whether Alaska treated Plaintiffs in a “hostile manner, outside of widely-accepted norms.” *Id.*
26 at 28 (citing *Wachuku v. Jet Blue Airways Corp.*, No. 220CV01061VAPPVCX, 2021 WL
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1 4497497, at *4 (C.D. Cal. July 14, 2021). However, the Ninth Circuit has not expressly adopted
2 this modification of the *McDonnell Douglas* framework. *Lindsey*, 447 F.3d at 1145 (9th Cir.
3 2006) (“Although we find the Sixth Circuit’s reasoning compelling, we need not decide today
4 whether its modification of the fourth element of a *prima facie* case under section 1981 is
5 required in many or all cases arising in a commercial, non-employment context.”). Because of
6 this open question, courts within the Ninth Circuit have continued to apply the traditional
7 “similarly-situated” standard while acknowledging that the outcome would not change under the
8 “reasonable person” standard. *See Portfolio Investments, LLC v. First Sav. Bank*, No. C12-104
9 RAJ, 2013 WL 1187622, at *5 (W.D. Wash. Mar. 20, 2013), *aff’d sub nom. Portfolio Investments*
10 *LLC v. First Sav. Bank Nw.*, 583 F. App’x 814 (9th Cir. 2014); *Harrison v. Wells Fargo Bank,*
11 *N.A.*, No. C18-07824 WHA, 2019 WL 2085447, at *3 (N.D. Cal. May 13, 2019).

14 Here, Plaintiffs have asserted under the “reasonable person” standard, a reasonable trier
15 of fact could conclude that Alaska treated Mr. Dirar and Mr. Elamin in a hostile manner outside
16 of widely accepted norms. They argue that Captain Reda took actions that departed from his
17 professional training, and Passenger Chapeta falsely accused Mr. Dirar and Mr. Elamin of posing
18 a threat and succeeded in having them removed from the plane. Plaintiffs also address the
19 “similarly situated” standard and argue that even if the Court applies this standard, a reasonable
20 trier of fact could conclude that Alaska treated Mr. Dirar and Mr. Elamin less favorably than
21 similarly situated passengers. The Court agrees with Plaintiffs under either standard. The Court
22 will proceed through the remainder of the *McDonnell Douglas* framework to evaluate Plaintiffs’
23 claim.
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26 **2. Alaska’s legitimate, non-discriminatory reason for removal**

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Having found that Plaintiffs have presented a triable issue of fact as to their *prima facie* case of discrimination, the burden shifts to Alaska to provide a legitimate, non-discriminatory reason for the adverse action. It is undisputed that Alaska has articulated such a reason under the Federal Aviation Act, which provides that an air carrier “may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.” Dkt. #41 at 17 (citing 49 U.S.C. § 44902(b)). Plaintiffs argue that the reason for removal was discriminatory, while Alaska argues that the reason for removal was safety related. *See generally* Dkt. #41 and Dkt. # 46. This dispute is properly considered in the discussion of pretext below. Since Alaska has argued a legitimate nondiscriminatory reason for removal, Alaska has met their burden.

3. Plaintiffs’ burden of establishing pretext

Once a defendant presents a legitimate, non-discriminatory reason for its actions, the presumption of discrimination “drops out of the picture” and the burden shifts back to plaintiff to prove the proffered reasons were a pretext for discrimination. *Lindsey*, 447 F.3d at 1148 (quoting *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510–11 (1993)) (internal quotations omitted). Plaintiff may prove pretext one of two ways: (1) indirectly, by showing the defendant's proffered explanation is “unworthy of credence,” or (2) directly, by showing that unlawful discrimination more likely motivated the defendant. *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1127 (9th Cir. 2000).

Under the *McDonnell Douglas* burden shifting framework, the key remaining issue is pretext. At this stage, the Court’s only function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Credibility determinations, weighing of evidence, and drawing of legitimate inferences from the facts are

responsibilities of a jury. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986).

Here, Plaintiffs argue that Alaska's proffered reasons for subjecting Mr. Elamin and Mr. Dirar to extra screening and questioning, and then nonetheless rebooking them on different flights are "completely unbelievable." Dkt. #46 at 34. Defendant argues that the contemporaneous reports of the persons directly involved in this case are consistent in demonstrating Captain Reda's belief that the Plaintiffs' presence on the flight might be inimical to safety. Dkt. #47 at 20.

The Court rejects Plaintiffs' argument that the proffered reasons presented by Alaska are "completely unbelievable." Captain Reda will testify to the information he received, and the "red flags" that ultimately influenced his decision to remove Plaintiffs from the plane. Given this testimony, it is entirely possible that a reasonable juror could find Captain Reda believable. Plaintiffs also argue that summary judgment should be granted for Mr. Elamin because the only safety concern pertaining to him was that he used the bathroom in a "suspicious" manner. Dkt. #46, at 40. However, since Plaintiffs were traveling together, the Court concludes there is a genuine dispute of material fact as to Mr. Elamin's involvement with Mr. Dirar regarding the safety concerns raised during the time of the incident. For these reasons, summary judgment cannot be granted in favor of Plaintiffs.

The Court also rejects Defendant's argument that it has proven Plaintiffs might have been a safety risk based on the testimony of witnesses who were directly involved in the incident. Such testimony does not necessarily establish that Plaintiffs' presence on the flight was in fact inimical to safety. One witness may testify that the text messages were misinterpreted at the time and

1 ultimately harmless, while another witness may testify that the use of certain emojis is
2 inappropriate on an airplane. The credibility of these witnesses are at issue.

3 A passenger's removal is proper under Section 44902 so long as the pilot's decision is
4 not arbitrary or capricious. *Cordero v. Cia Mexicana De Aviacion, S.A.*, 681 F.2d 669, 672 (9th
5 Cir. 1982) ("[I]f the passenger is excluded because the opinion of the pilot is arbitrary or
6 capricious and not justified by any reason or rational appraisal of the facts, then the denial of
7 passage is discriminatory"). Here, Captain Reda spoke with several individuals who provided
8 different interpretations of Plaintiff's text messages, then, on his own accord, googled "mutasim
9 + terrorist." Plaintiffs argue that even though the decisionmakers with whom Captain Reda
10 consulted concluded that Plaintiffs did not present a safety threat, Captain Reda went beyond
11 Alaska's clearly established norms by performing the google search. Dkt. #46 at 37. Under the
12 arbitrary or capricious standard, while it is a close call, Alaska has not tipped the evidentiary
13 scale enough to convince the Court that Captain Reda's decision to remove the passengers was
14 proper as a matter of law. Because a reasonable juror could very well find that the removal of
15 Plaintiffs was pretextual depending on the testimony of these witnesses, the Court will not grant
16 summary judgment in favor of Defendant's claim.

20 C. State Law Claim

21 Plaintiffs' remaining state law claim is for violation of Washington State Law Against
22 Discrimination, RCW 49.60.030. Defendants move for summary judgment on this claim on the
23 grounds that they are preempted by the Federal Aviation Act ("FAA"), specifically 49 U.S.C. §
24 44902(b). It is undisputed that Captain Reda made the decision to remove Plaintiffs from the
25 plane. However, while he had discretion to act under § 44902(b), such discretion is not "a license
26 to discriminate." *Bayaa v. United Airlines, Inc.*, 249 F.Supp.2d 1198, 1205 (C.D.Cal. 2002)
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1 (finding that § 44902 does not preempt civil rights claims under 42 U.S.C. § 1983 and Title VII
2 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d). Given the reasoning in *Bayaa* and the
3 unique facts of this case, the Court declines to find that this claim is preempted. While Defendant
4 may ultimately be able to show that Plaintiffs cannot prove discrimination under the Washington
5 Law Against Discrimination, such a factual determination is not appropriate as part of the Court's
6 inquiry on a motion for summary judgment.
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8 IV. CONCLUSION

9 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
10 finds and ORDERS that:

- 11 1. Alaska's Motion for Summary Judgment Dkt. #41, is DENIED; and
- 12 2. Plaintiffs' Motion for Summary Judgment Dkt. # 46, is DENIED.
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15 DATED this 1st day of November, 2023.
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19 RICARDO S. MARTINEZ
20 UNITED STATES DISTRICT JUDGE
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